IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.596 OF 1997

Shri Harisingh Bandusing Sable)
)
Adult, Occupation-Service,)
Commandant, S.R.P.F.Group No.7)
Daund, Dist. Pune.)..Appellant
(Org.Accused No.1)

Versus

The State of Maharashtra)..Respondents

W I T H

CRIMINAL APPEAL NO.587 OF 1997

Limbaraj Mohan More)
)
Age-Adult, Occupation: Retired)
Govt. Servant, R/at S.R.P.F.)
Group No.7, Daund, Dist. Pune.)..Appellant
(Org.Accused No.2)

Versus

The State of Maharashtra)..Respondents.

Mrs.Rohini A.Wagn for the appellants.

Mr.P.H.Hingorani, APP for the State.

Coram : R.S.Mohite,J

Date : 2nd May, 2006.

Judgment :-

1. Both the aforesaid appeals have been filed impugning a judgment and order passed by a Special Judge, Pune on 18.9.1997 in Special case no.3/92. Since both the appeals arise out of a common

judgment and order the same are being disposed of by this common judgment and order. Criminal appeal no.596/97 has been filed by Harising Bandusing Sable who was the original accused no.1 in special case no.3/92. Criminal appeal no.587/97 was originally filed by Limbraj Mohan More who was original accused no.2 in special case no.3/92. The said Limbraj Mohan More expired during the pendency of his present appeal and appeal was carried forward by his heirs. By the impugned judgment and order accused no.1 Harisingh Bandusing Sable is convicted for the offences punishable under Sections 13(i) (a) & 14(i) (d) read with Section 13(2) of the Prevention of Corruption Act 1988 and sentenced to under-go RI for 3 years and to pay a fine of Rs.1000/- on each count, in default to suffer further RI for 1 month. He is also convicted for the commission of the offence under Section 12 of the Prevention of Corruption Act 1988 and sentenced to under-go RI for 2 years and to pay a fine of Rs.1000/- in default to suffer RI for one month. Under the impugned judgment and order accused no.2 Limbraj Mohan More was convicted for the offence punishable under Sections 13(1)(a) and 13(i) (d) of the Prevention of Corruption Act and sentenced to under-go RI for 3 years and to pay a fine of Rs.1000/- on each count, in default to under-go RI for one month on each count. He was further convicted under Section 7 of the Prevention of Corruption Act 1988 and sentenced

to under-go RI for 2 years and to pay a fine of Rs.1000/-, in default to under-go further RI for 1 month. The trial Court directed that the substantive sentences of both the accused would run concurrently. At the trial there was one other person by name Kanta Ganpat Kanade who was arraigned as accused no.3 in the trial. The trial Court acquitted accused no.3. Thus accused no.1 Harisingh Bandusing Sable and original accused no.2 Limbraj Mohan More were the 2 persons to file an appeal in this Court.

2. The brief facts of the prosecution case were as under :-

(a) In the year 1990 accused no.1 Harising Sable (hereinafter referred to as ‘Sable’) was working as a Commandant of group no.VII of the Special Reserve Police which had its campus at the outskirts of Daund Taluka Daund, Dist. Pune. Accused no.2 Limbraj More (hereinafter referred to as ‘More’) was working as a PSI under Sable in the same group.

(b) Between the periods 30.7.1990 and 1.8.1990 selection of new recruits to the special reserve police took place at Thane. For the purpose of this selection, the Government had formed a selection committee comprising of the commandant of group no.VII i.e. Mr.Sable, resident Deputy Collector,

Adivasi project officer, Social welfare officer and members of district sainik board. As per the order of the DIG the districts of Thane, Raigad and Ahmednagar were allotted to group VII of SRP and the selection committee was required to recruit candidates to group-VII only from these 3 districts. The name of the recruits who were to be considered had been forwarded by the employment exchange, social welfare office, Adivasi project officer and the district sainik board. In case any recruit had applied from the category of sportsman, his name was required to be forwarded by the office of the district sports officer. The candidates who were expected to be appointed had filled in their forms in their own hand writing. If they had applied from the sportsman category, they were required to furnish details in their application annexing sport certificates which was required to be varified. The minimum requirement for a candidate to apply from the sportsman category was that he was a sportsman who had participated at the district and state level. If the candidate was selected from the sports category, a special note to that effect was required to be taken in the recruitment register. The selection process included physical measurement and physical test. If the candidate did not pass these 2 tests, he was liable to be rejected. There was also a written test and an interview. As stated aforesaid, this entire process of recruitment

consumed a period of 3 days between 30.7.1990 and 1.8.1990 and resulted in the recruitment of 44 candidates of which, according to the prosecution, 14 were from the sports category.

(c) That after the completion of the selection process on 10.8.1990, 42 new recruits out of the 44 who have been selected joined at the campus of group no.VII at Daund. On the same day i.e. 10.8.1990 a sheet clerk by name Bhavar put up appointment letters of all the new recruits before (PW 5) Prakash Gaikwad who was working as a senior clerk and accountant. (PW 5) Prakash Gaikwad initialed the order and forwarded the same to the adjutent officer Shri Survase. After Survase had signed the appointment orders the same were forwarded to commandant Sable but appointment orders were not issued to the new recruits as commandant Sable did not sign that orders. Not with standing this fact, part kit was issued to the new recruits on 13.8.1990 and the training of the recruits commenced.

(d) On 27.8.1990 at about 10.30 A.M. 14 of the recruits who had been selected in the category of sportsman were called by accused More through a line policemen. They were rounded up and taken to the office of More. Accused More told these 14 new recruits that they had been called by the commandant Sable and saying so he took all of them to the

office of the Commandant. In his office accused Sable informed these 14 recruits that their sport certificates were bogus. He questioned them as to who had selected them and made a query as to how they would be able to play on the ground. He asked them to go back to their houses. That thereafter these 14 recruits came out of the office alongwith accused More. They asked accused no.2 as to why the commandant had spoken in this manner. Accused More assured them that he would look into the matter and thereafter returned back to the chamber of the commandant Sable. He came out of the chamber within 10 minutes and in front of the office of accused no.1 Sable, he informed the 14 recruits that it was the order of commandant Sable that each one of them was to bring Rs.10,000/- and they were to be granted leave for 2 days to enable them to collect the amount. Accused More informed the recruits that they were free to go to the chamber of commandant Sable to make enquiry. The complainant (PW 6) Suresh Patil and (PW 3) Rajendra Mengande were selected by the new recruits to make enquiry with the commandant Sable. Accused More asked them to request commandant Sable to show sympathy towards them and thereafter took both of them into the chamber of commandant Sable. On entering the chamber of commandant Sable the complainant Suresh Patil requested commandant Sable not to behave with them so rudely, to show sympathy towards them and to

find some way. They offered to pay whatever commandant Sable wanted. Commandant Sable asked the accused More to inform and to grant 2 days leave. The complainant suresh and (PW 3) Mengande then came out of the chamber of accused no.1 while accused no.2 More remained behind. After some time, More also came out of the chamber of commandant Sable and informed them that it was the order of the commandant Sable to bring Rs.10,000/- each and for that purpose 2 days leave has been granted to them. The new recruits informed accused More that it was difficult to arrange such a large amount. Accused More informed them that he had no personal interest in the matter but the same was the order of the commandant Sable. The new recruits returned to their barracks and at the barracks an inspector by name Kshirsagar asked these recruits to give the names of recruits who were proceeding on leave and accordingly names of such persons who were proceeding on leave were written down on a sheet (Exh.65). Thereafter these 14 recruits proceeded on leave.

(e) On 22.8.1990 a 2nd appointment order in respect of the new recruits were put up before (PW 5) Prakash Gaikwad, by the establishment clerk Mr.BichuKale. Senior clerk (PW 5) enquired from the Bichukale as to what had happened regarding the 1st order and was informed that the first order was not

signed and that the commandant had asked for issuance of the fresh order. The Senior clerk Prakash Gaikwad then initialed the 2nd order and again forwarded the same to Mr.Survase. On 28.8.1990 Bichukale was informed by (PW 5) Prakash Gaikwad that he had received the appointment order with the signature of the Commandant Sable on stencil and office copy. Bichukale showed (PW 5) Prakash Gaikwad the office copy of that order and Prakash Gaikwad noticed that Sable had signed on that order and put a date of 10.8.1990. He also noticed that the date, which has been put up by him below his initial had been changed to 10.8.1990.

(f) On 28.8.1990 till 31.8.1990, out of the 14 new recruits who had proceeded on leave some of them returned with some amounts and the money was paid either to accused no.2 More or to accused no.3 Kanade. The total amount collected and thus paid was Rs.78,000/-.

(g) The Complainant (PW 6) Suresh Patil initially returned back without money but was sent back by accused no.2 More with a request that he should at least bring Rs.5000/-. The complainant then returned back to Thane and managed to collect Rs.5000/- from his brother but instead of paying the said amount he decided to approach ACB office at Pune. In the ACB office he met Dy.S.P. Kamble (PW

23) and narrated the entire incident. His complaint was reduced to writing and after recording the complaint, Dy.S.P. Kamble prepared a trap. Dy.S.P. Kamble called 2 panchas by name Pandurang Damse and Salim Mustagi. The amount of Rs.5000/- brought by the complainant Suresh was taken by Dy.S.P.Kamble. Use of anthracene powder was demonstrated. Currency notes totalling Rs.5,000/- were kept on the right side pocket of the complainant with instructions not to touch these notes unless demanded by the accused. A detailed pre trap panchanama was prepared in the presence of both the panchas and thereafter at 5.30 P.M. on 1.9.1990 the complainant, panchas and police proceeded in a Govt. jeep to Daund.

(h) After reaching the campus of group VII SRP at Daund, the complainant party alongwith panchas went walking towards the officers' quarters of the campus. There complainant noticed that accused More and 2 other persons were taking meal on their dinner table. Accused More noticed their presence and asked them to remain outside. After completion of their meal accused no.1 came out of the quarter and asked them to accompany him to the room which was adjacent to the room in which they had been taking meals. The said room was only latched and was opened by accused More. Once accused More, the complainant and the panch Damse were inside the room, accused More asked the complainant as to by

which train he had arrived and was informed by the complainant that he had arrived by Madras train which had reached there by 8.00 P.M. After some more conversation accused More enquired from the complainant as to whether he had brought the amount. Complainant informed him that he had brought only half of the amount. Accused More asked him to show and to pay the same. Accused no.2 accepted the amount in his right hand and passed it into his left hand. He took one paper which was lying in the room and made a tick mark on the paper. Thereafter accused More passed on the currency notes from the left hand to right hand and started counting the same. While accused was counting the notes complainant came out of the room and gave signal as per the instructions. Thereafter immediately members of the raiding party reached there and complainant was asked to wait outside.

(i) On entering the room (PW 23) Dy.S.P. showed his identity to the accused More and searched his person. Lights in the said room were put out and under ultra violet lamp no traces of anthracene powder were found on the persons of the raiding party. Then the hands of the accused were inspected and under the ultra violet lamp in darkness and light blue shining of anthracene powder was noticed on his right hand palm and finger. PW 23 Dy.S.P. seized those currency notes, ball pen, paper of

exercise book, diary and bed sheet for the purpose of investigation. One of the panchas collected currency notes and put them in an envelope after talling the numbers which envelope was sealed and signed by both the panchas. The bed sheet, diary, pen and paper on which anthracene powder was found were also sealed and put in separate envelopes. Those envelopes were also sealed and signed by the panchas. Dy.S.P.Kamble took search of the entire quarter and found cash of Rs.2000/- but the same was returned back to accused More. That thereafter a post trap panchanama was prepared at the same spot and was signed by the panchas. The complainant was also called into the room and his hands and clothes were inspected under ultra violet lamp. Anthracene powder was found on his right hand and right side pocket of his pant. A copy of the post trap panchanama (Exh.60) was also furnished to accused More.

(j) That from the spot of the trap, raiding party went to the head office of the group and waited there at 15 minutes. They sealed the office under a separate panchanama (Exh.61). Thereafter police then conducted a house search of accused no.2. but nothing incriminating was found. The police party then returned to Pune.

(k) On the next day morning i.e. 2.9.1999 the

police party again reached Daund in the morning. On 4.9.1990 at about 10.00 A.M. panchas were again called to the ACB office and after being shown the sealed envelopes in which anthracene powder and papers were kept, they verified under a panchanama (Exh.64) that the seal was intact. The detailed statement of the 2 panchas were recorded. Dy.S.P. Kamble then recorded the statement of inspector Jadhav, clerk Pawar and 15 witnesses and lodged a report on behalf of State at police station Daund (Exh.113). He sent that report alongwith covering letter (Exh.114) and alongwith the report he also dispatched the sealed articles such as currency notes, ball pen etc. On the same day he recorded statement of 13 recruits and the complainant. He also recorded statement of both the panchas on the same day. As 2.9.1990 was the sunday, he did not open the office of the commandant and the same was opened on 3.9.1990 by removing seal in the presence of Assistant commandant Survase. He seized the record and prepared a panchanama relating to the seizure of the record (Exh.63) and obtained the signature of the 2 panchas thereon. On 2.9.1990 he recorded the statement of Shivaji and 8 persons and he noticed involvement of accused no.3 Kanade. He impleaded him as accused no.3 in the investigation. On 3.9.1990 he went to the house of accused no.1 but could not take the house search as he was out of station, having been deputed to Pune for Ganpati

bandobast.

(l) On 5.9.1990 Dy.S.P. took search of the house of commandant Sable but nothing incriminating was found. On 7.9.1990 he recorded the statement of P.A.Gaikwad (PW 5). He showed the paper at Exh.65 to the recruits and sent the diary (Exh.75) seized from the office of accused no.2 for identification of hand-writing. He recorded the statement of the relatives of the accused. He seized the certificate of the recruits from the office and verified their genuiness from the districts from where they were issued. Inspector Shivaji Kshirsagar produced a list of accused which was prepared when leave was granted to the recruits. Thereafter he proceeded to complete the investigation and on 31.12.1990 he sent a final report to his Superior. On 17.2.1992 he received the sanction for the prosecution of the accused and after receipt of such sanction, on 30.3.1993 he filed a charge-sheet against all the 3 accused.

(m) After receipt of the charge-sheet, the trial Court framed the charges and proceeded with the trial. On behalf of the prosecution 24 witnesses were examined and voluminous documentary evidence was led. After the evidence was completed the statement of the accused came to be recorded. The accused did not lead any defence evidence. From the

313 statement as also from the suggestions made to various witnesses, it is evident that the case of the accused was of total denial. It is also the defence that the accused had been deliberately blamed at the behest of certain officers and the police who are enmical to accused no.1. After taking into account the entire record, the trial Court convicted and sentenced the accused nos.1 & 2 and acquitted accused no.3. Being aggrieved by this judgment and order, the present two appeals have been filed.

3. After hearing both sides exhaustively and perusing the numerous documents, in my view the accused will have to be acquitted for the following reasons :-

(a) In my view the sanction order has been issued without proper application of mind ;

(b) That there are several serious lacunas and loopholes in the prosecution case of which benefit will have to be given to the accused.

(c) The evidence falls short of proof of guilt of the accused being established beyond reasonable doubt as required by law.

4. On the first count which relates to the sanction

order being vitiated for non application of mind, one has only to peruse the evidence of the officer who has issued the sanction order. This officer is (PW 22) Shrinivas Jammu Nathan. At the relevant time when he was called upon to grant sanction he was holding the post of Additional Chief Secretary, Home Department, in the Govt. of Maharashtra. In his examination-in-chief he stated that he received the case papers of this case for sanction through the D.G. ACB Pune. He also received a report from the Director General of ACB for prosecution of the accused. Those papers were examined by the Home ministry in consultation with the department of Law & Judiciary and the same was put before the Government of Maharashtra for sanction purpose. That was approved on 2.1.1992. Thereafter formal sanction order was prepared and the same was again examined by the Law & Judiciary before he signed on it. Before signing the sanction order he perused all the papers, report and opinion of Law & judiciary and home department. After he read the papers he signed the sanction order. He proved his signature on the sanction order which was then exhibited at Exh.107. In the cross-examination of this witness however, his testimony given in relation to the application of his mind stood completely shattered. In his cross-examination he admitted that it was true that true facts must be presented before sanctioning authority before

granting sanction. He admitted that he did not remember as to whether he noticed any breach of procedure while appointing the candidates. He did not make any attempt to peruse the recruitment register. He did not remember as to whether any material was placed before him to show that these 14 recruits were selected from the category of sportsman. He has not taken any noting while according the sanction. He agreed that the statements recorded during the course of investigation were not to be signed by the witnesses. He candidly admitted that he did not peruse the statements of the 14 witnesses who have supposed to have paid the bribe. He also further admitted that he did not peruse any papers but only perused the report submitted by the Director of ACB Bombay and analysis made by the Home department. (emphasis provided). In this case all the 14 recruits were examined by the prosecution as star witnesses. Once the sanctioning officer admitted that he had not perused the statements of these 14 witnesses and further admitted that he did not peruse any papers except the papers and the analysis of the Home department, in my view, this by itself will deliver a fatal blow to the prosecution. It is well settled by a catena of judgments that the grant of sanction is very important for valid prosecution. It must be established to have been accorded after due application of mind. (See : **Dhirajlal**

Chatrabhuj Ratnagrahi Vs. State of Maharashtra reported in 1994(2) Bom.C.R. 610). It is also equally well settled that if the sanction is bad in law, the entire trial must be held to be void ab-initio (See : **Anand s/o Gopal Gurve V/s. The State of Maharashtra reported in 1994(i) Bom.C.R.168).** The Apex Court further laid down in this regard that for the grant of valid sanction- there must be independent application of mind to the facts of the case as also material and evidence collected during investigation by the authority competent to grant sanction is essential. (See : **Mansukhlal Vithaldas Chauhan V/s. State of Gujarat reported in (1997) 7 Supreme Court Cases 622).** In my view, once the sanctioning authority gave vital admissions of the nature referred to here-in-above, his sanction order stands vitiated for non application of mind. On this ground alone the entire prosecution must fail.

5. Be that as it may, I also intend to refer the merits of the case because I find that there are several lacunas of which the benefit must go to the accused. These may be enumurated as follows :-

(i) It is the case of the prosecution that the 14 recruits from whom bribe was demanded were all appointed from the sports category. In this regard though the prosecution produced a file containing

653 pages pertaining to the process leading to the recruitment of 44 recruits, there is no document to indicate that 14 recruits were appointed from the sports category or even to indicate that these 14 persons were given any preference due to their proficiency in sports. I may mention in this regard that the prosecution produced Exh.49 which contains 120 pages being the sport certificates said to have been issued to the 14 recruits but it is fairly conceded that no evidence has been led to show that these 14 persons were recruited from the sports category. Appointment order (Exh.79) which was ultimately issued to 42 persons is also does not indicate that any of the 42 persons were appointed from sports category.

(ii) That in this case the trap was sprung by the investigating officer on 1.9.1990, which was also the date when the FIR was lodged. Though accused no.2 is said to have been caught red-handed, none of the 3 accused were arrested by the investigating officer. The prosecution has not been able to recover any part of Rs.78,000/- said to have been paid as a bribe.

(iii) According to the prosecution on 10.8.1990, a recruitment order was forwarded to accused no.1 Commandant Sable but he did not sign this recruitment order. A 2nd recruitment order dated

22.8.1990 was therefore, prepared by Mr.Bichukale who was the establishment clerk. On 28.8.1990 (PW 5) Prakash Gaikwad was informed by Mr.Bichukale that he had received this appointment order with the signature of accused no.1 in stencil and office copy. This office copy was shown by Bichukale to (PW 5) Prakash Gaikwad and PW 5 noticed that accused no.1 had signed the said document and put date of 10.8.1990 thereof. He also noticed that the date below his initial which was 28.8.1990 was changed to 10.8.1990. This document also bore the initials of Bichukale and Survase and was produced by the prosecution at (Exh.79). From this evidence, it appears that the prosecution was unable to lay its hands on the appointment order said to have been first forwarded to accused no.1 on 10.8.1990. Exh.79 is signed by the Commandant Sable. The date below the signature was 10.8.1990. There are 3 initials below this document said to be that of (PW 5) Prakash Gaikwad, Bichukale and Survase. These initials were however, put at the place which indicates that the copy of the said order is forwarded to Assistant Commandant and Adjutent. There appears to be some re-writing in so far as the dates below these initials are concerned but such re-writing cannot be attributed to accused no.1 because admittedly this document was in the hands of Bichukale by 28.8.1990. It must be remember that the 14 recruits were given leave on 28.8.1990 to

allegedly go and collect the bribe amount. It is difficult to believe that even before 14 recruits returned to pay the bribe money, the appointment order had already been signed by accused no.1 and handed over to Bichukale. In my view, the evidence of Bichukale was crucial evidence in order to bring on record the date on which he received the appointment order from accused no.1 Sable in his hand. Bichukale has not been examined and this introduces a serious lacuna in the prosecution case. In the normal course, if commandant Sable intended to appoint only such recruits who had paid the bribe then his normal conduct would be he would sign the appointment orders only after these recruits returned with the amount demanded.

(iv) It appears that not-with-standing a statutory requirement under Section 17 of the Prevention of Corruption Act 1988 to the effect that offence under the Act should be investigated by a Deputy Superintendent of police or a police officer of equivalent rank, in the present case it appears that the Investigating officer who was a Deputy Superintendent of police allowed the investigation to slip out of his hands. He admitted in his cross-examination that for the first time he recorded the statement of 13 recruits who had allegedly paid the bribe amount only the evening after 7.30 P.M. and did not record the statement of

these 13 recruits in the morning session. He admitted that it was true that later on he came to know that statement of these 13 recruits were recorded on the same date twice. He admitted that before recording the statements of these recruits in the evening, their statements had already been recorded in the morning by officers Mulani, Balkawde and Godse. The record indicates that officers Mulani and Godse were also police inspectors. Investigating officer Shankar Kamble further admitted that he had not asked those officers to record the statements of the recruits. He did not call the explanation of these officers as to why they had recorded the statements of those recruits. He did not ask his officers as to why they obtained the signatures of those recruits on the statement. He signed on the statements recorded by his officers as "before me". It may further be stated that the record indicates that these statements of 13 recruits who had allegedly given bribe were supressed by the prosecution from the Court and were noticed by accident only when the evidence of (PW 11), who was one of the recruits, was in progress. The Court had to pass a special order to direct the Investigating officer to produce these statements. Even thereafter the prosecution did not choose to examine PI Mulani, Balkawde or Godse. It is an admitted fact that all these statements taken by his subordinate officer bore the signatures of the

recruits. It must be mentioned here that section 162 of the Cr.P.C. categorically provides that the statement to the police should not be signed. The rationale behind this provision is that witness should not be put under pressure to stick to his statement recorded during the investigation and should be free to speak the truth before the Court. In the present case all the 13 recruits who had just been appointed would obviously come under pressure once they were forced to sign their statements during the police investigation. If they resciled from such a statement after their signatures were obtained, there would be apprehension in their mind that they would have to face departmental proceedings. In this regard useful reference can be made to two judgments which deal with the effect of taking of the signature on statements recorded under Section 162 of the Cr.P.C. The first is the Division Bench judgment of the Madras High Court in the case of **P.Sirajuddin V/s. State reported in AIR 1968 MADRAS 117**. In paragraph-18 of the said judgment the Division Bench of Madras High Court observed as under :-

> "Now we shall consider the effect of disregarding the provisions of Ss.162 and 163 while gathering evidence during the course of investigation. The policy underlying the prohibition of S.162 against taking the signature of a maker of statement appears to be that the witness at the trial should be free to make any

statement in favour of the petitioner which he may wish to make unhampered by anything which he might have said or might have been made to say to the police. The result of taking signature of the maker of the statement to his statement would be to tie him down to the statement so recorded or at least to give him the impression that he is so tied down and would not be free to make a different statement. The maker of a statement may feel at the trial that he is not a free agent to give evidence. No doubt the evidence of the witness who has signed the statement given in open Court at the trial does not on that account only become inadmissible. There are no words for such prohibition in the Code or the Evidence Act nor can it be said that the entire proceedings and investigation get vitiated by taking signed statements. The effect of signature on a statement may be in most cases seriously impair the evidence of the witness. Witnesses of standing and culture and with trained minds who might have given signed statements may hardly be expected to depart from what they have stated if subsequently statements are recorded from them under Section 164 Cr.P.C. or evidence taken in Court. They may feel that they have pinned themselves down by the former signed statements, however, it might have been obtained. No doubt the question in each case would be whether the witness appeared to have been influenced by the impression that since he has given a signed statement to the police he is bound to repeat the same at the trial. The answer to this question would depend on the circumstances of each case, the nature and character of the evidence and the witnesses involved. In Tahsildar Singh V. State of Uttar Pradesh, 1959 Supp (2) SCR 875 = (AIR 1959 SC 1012) while discussing the objects sought to be achieved by S. 162 Cr.P.C. reference is made to the observations of Braund J in Emperor v. Aftab Mohd. Khan, AIR 1940 ALL 291 :

" As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made may be in a position to influence the maker of it, and, on the

other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that as investigation has already started, are prepared to tell untruths."

The following observation of a Division Bench of the Nagpur High Court in Baliram Tikaram v. Emperor. AIR 1945 Nag 1 is also referred:

" The object of the section is to protect the accused both against over-zealous police officers and untruthful witnesses."

The Supreme Court also cites the following passage from the judgment of the Judicial Committee in Narayanaswami v.Emperor. 66 Ind App 66 = (AIR 1939 PC 47).

" If one had to guess at the intention of the Legislature in framing a section in the words used, one would suppose that they had in mind to encourage the free disclosure of information or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statements or both."

In P. Kotayya v. Emperor, 74 Ind. App 65 at p.74 = (AIR 1947 P.C. 67 at p.69) their Lordships of the Judicial committee noted that "Courts in India have always regarded any breach of the proviso to Sec.162 as a matter of gravity". True it has been observed by their Lordships of the Judicial Committee in zahiruddin V. Emperor, 74 Ind App 80 = (AIR 1947 P.c. 75) that where in contravention of Sec.162 sub-sec. (1) Crl.P.c. a witness has signed a statement made to a police officer which has been reduced into writing, the evidence given by the witness who signed it does not become inadmissible and still less can it be said that the contravention has the effect of vitiating the whole proceeding. Their Lordships observe that the value of his evidence, however, may be seriously impaired as a consequence of the contravention of the statutory safeguard".

. This judgment was followed by a single judge of the Allahabad High Court in the case of **Vyas Tewari**

v. State reported in 1973 CRI.L.J. 1420, wherein the Court observed as under :-

> " (A) The mere fact that signature of the witness was obtained on the statement made by him does not by itself justify the rejection of his evidence. But where the witness had been put under influence that since he had given a signed statement he was bound to repeat the same in Court the evidence given by him cannot be safely relied on."

. It may be noted that in the present case, not only where 12 recruits who had allegedly given bribes asked to sign their statements, but these statements were recorded by officers below the rank of Deputy Superintendent of police who were not authorised in law to record such statements and who were not conducting the investigation. Apart from this, the fact that the recruits whose signed statements were taken were all government servants and against whom departmental enquiry could be taken is another relevant factor while deciding as to whether such witnesses should be believed. Another fact which is relevant is that the recording of such statements was a fact conceled from the Court by the prosecution and even after the prosecution was compelled to produce these statements before the Court after the trial had substantially progressed, the subordinate officers who had recorded these statements were not examined by the prosecution.

This procedure followed by the Investigating officer in the face of the prohibitions contained in Section 162 and Section 17 of Prevention of Corruption Act must be depricated as it has introduced an un-necessary lacuna and weakness in the prosecution case. Be that as it may, the non inclusion of these statements in the charge-sheet and the non production of the statement at an early stage before the Court is yet another matter that needs to be depricated.

6. As regards the making of a demand and acceptance admittedly as far as commandant Sable is concerned he has not directly demanded any amount from any other accused. None of the witnesses talked about any demand being made by accused no.1. There is also admittedly no acceptance of any amount by him. In fact, the evidence indicates that accused no.1 commandant Sable had gone for bandobast to pune city between 28.8.1990 to 5.9.1990. There is evidence of the complainant and other recruits about accused no.2 asking them for a bribe on behalf of accused no.1. I am however, not inclined to believe the evidence of the 12 other recruits who have been examined because admittedly they have been pinned down by taking their signed statements during the investigation. It must be remember that the bribe money said to have been paid by them has never been recovered and no attempt has been made to trace this

amount. That leads us to the evidence of the complainant and it is settled law that in corruption cases the evidence of the complainant is the evidence of an accomplice. Reference in this regard may be made to the observation of the Apex Court in the case of **Panalal Damodar Rathi v/s. State of Maharashtra reported in AIR 1979 SC 1191.** This would also be the position of other 12 witnesses who were the bribe givers.

7. No doubt independent corroboration could come from reliable evidence relating to the finding of anthracene powder on accused no.2 and his articles but even regarding this evidence there are several doubts. Firstly the evidence of the panch indicates that when the police, panchas and the complainant went to the campus of group-7, accused no.2 was not present in the room where the bed and other articles are found covered with anthracene powder. The evidence indicates that the said room where the articles having anthracene powder was ultimately found and seized was not locked but was only latched. In other words, access to this room was available to anyone.

8. It may be mentioned here that after trap was sprung on 1.9.1990, according to the evidence of the panch, bed sheet, diary, pen, papers were seized and put in a separate envelopes and those envelopes were

sealed and signed by the panchas. The signature of panchas were taken on the sealed envelopes. This process was recorded in the panchanama (Exh.60). It is further clear that 4 of these sealed envelopes were opened before the Court and these envelopes were part of muddemal article no.4. The paper which was seized from the cot of the accused and which was exhibited as Exh.65 had anthracene powder on it. If this was the true and correct position, then the paper at Exh.65 must have been in a sealed condition from 1.9.1990 till the time when the envelope in which it was put was opened in the Court on 11.7.1995. However, the complainant Suresh Patil (PW 6) admitted that on the next date i.e. the day after the trap, his statement was recorded in the said campus and while recording his evidence the document at Exh.65 was shown to him and at that time it was not in a sealed condition. Elsewhere, in his evidence, he stated that Dy.S.P. Kamble was the person who had shown him Exh.65. This evidence raises doubt as to whether articles said to have been found in the room of accused no.2 where ever sealed. The Investigating officer has also admitted in his evidence that he seized Exh.65 for the purpose of investigation. He admitted that he showed this document to head constable Laxman Jadhav as well as to the various recruits. Admittedly, the various recruits were not present at the time when the trap was sprung. If the said document had been

sealed at that stage, then it could not have been shown to the various recruits as per the version given by PSI Kamble.

9. It is also seen that the evidence led regarding the contents of Exh.65 also raise doubts. According to (PW 8) Pandurang Nigot, instructor Kshirsagar handed over one paper to the recruits and asked them to write the names of recruits who wanted to go on leave. On that paper 3 recruits wrote their names in their own hand writing and (PW 8) Pandurang Nigot wrote the names of other recruits including himself in his handwriting. He identified Exh.65 to be that paper. A perusal of Exhibit-65 indicates that all the names have been written by one person. The investigating officer did not take sample handwriting of (PW 8) Pandurang Nigot for the purpose of obtaining expert evidence in support of the evidence of (PW 8) Pandurang Nigot.

10. As regards the diary which was also sealed immediately after the trap was sprung on 1.9.1990 it is the prosecution case that the same diary belongs to accused no.2 Limbraj More and its contents were written by Mr.More. However, surprisingly specimen handwriting of accused no.2 was never taken during the investigation. No handwriting of accused no.2 from the official record was also taken and sent to the handwriting expert alongwith Exh.75. It must

have been clear to the investigating officer that the entries in the diary (Exh.75) were of vital importance because the diary contained the names of the bribe giving recruits and also mentioned the amount said to have been given as a bribe given by each of the recruits. In the circumstances, establishing that the handwriting in the diary was that of accused no.2 was a matter of vital importance but for the reasons best known to him investigating officer chose not to conduct any further investigation in this regard. The diary (Exh.75) is said to have been sealed on 1.9.1990 just after the trap was sprung. However (PW 5) Prakash Gaikwad who was a senior clerk admitted that his statement was recorded on 7.9.1990 and that when his statement was recorded the diary (Exh.75) was shown to him. If the diary was sealed on 1.9.1990 and opened for the first time before the Court during the trial, the same could not have been shown to (PW 5) Prakash Gaikwad. The showing of Exh.65 and Exh.75 to various witnesses after they were allegedly sealed, raises a very serious doubt about the prosecution version that these documents have ever sealed. If these documents were not sealed as per the prosecution case, the finding of anthracene powder on these documents which is a part and parcel of sequence of events as recorded in the same post trap panchanama also becomes matter of doubt.

11. Taking an overall view of the matter, I feel that the accused must be given benefit of the aforesaid lacunas in the prosecution case and the appeals deserve to be allowed.

12. In the circumstances, I proceed to pass the following order :-

O R D E R

1. Both the Appeals are allowed. The judgment and order passed by the Special Judge, Pune on 18.9.1997 in Special Case No.3 of 1992 is quashed and set aside and the accused are acquitted of all charges. The fine if any, paid by the accused will be liable to be refunded. The fine if any, paid by accused no.2, will be liable to be refunded to the wife of original accused no.2- Rambhabai Limbraj More. It is made clear that the acquittal of the accused is not only because the sanction is vitiated or that there were serious lacunas in the prosecution evidence but also because the case against the accused have not been proved on merits.

(R.S.Mohite,J)